



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 8387-01  
21 March 2002

SSGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Staff Serge [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed modification of the contested fitness report for 4 November 1998 to 15 March 1999 by changing item A.7 ("Recommended for Promotion") from "No" to "N/A [not applicable]."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 March 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 4 December 2001, and the advisory opinions from the HQMC Military Law Branch, Judge Advocate Division, dated 31 January 2002, and the Marine Corps Recruiting Command, dated 14 February 2002, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinions. Regarding the contested fitness report for 1 October to 3 November 1998, they were unable to find any of the reporting senior's statements to be factually inaccurate. They found no adverse marks or comments in the contested fitness report for 4 November 1998 to 15 March 1999, so they found no requirement that this report be processed in accordance with the procedures for adverse fitness reports. Finally, they found no false statements in the request for your relief for cause. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

8387-01

IN REPLY REFER TO:  
1610  
MMER/PERB  
04 DEC 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 14 Sep 01  
(b) MCO P1610.7D w/Ch 1-5  
(c) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 November 2001 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 981001 to 981103 (CD). Reference (b) applies.
- b. Report B - 981104 to 990315 (TR). Reference (c) applies.

2. The petitioner contends the nonjudicial punishment (NJP) recorded in Report A reflects a grave injustice that was not administered equitably. Concerning Report B, the petitioner argues the Reporting Senior's comments were as a result of his alleged unjust relief for cause. To support his appeal, the petitioner furnishes his own detailed synopsis of the events and circumstances and several documentary items.

3. In its proceedings, the PERB concluded that:

- a. Report A is both administratively correct and procedurally complete as written and filed. Succinctly stated, the NJP occurred and has been correctly documented via the performance evaluation system. Unless or until the NJP is expunged, removal of the report is simply not warranted.

- b. Report B contains no comments that can be considered as either unjust or attributable to the petitioner's relief for cause. It is a "not observed" evaluation and has been described as such in Section I. The Board does, however, note an administrative error in Block A7. "Not observed" fitness reports should always reflect an "x" in the box labeled "N/A." This is

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not viewed as necessitating elimination of the report, and the Board has directed the necessary corrective action.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Staff Sergeant [REDACTED]'s official military record. The limited corrective action cited in subparagraph 3b is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps

0307-01



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070  
JAM7

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF STAFF SERGEANT [REDACTED]  
084 [REDACTED] USMC

1. We are asked to provide an opinion on Petitioner's request for the removal from his service record book (SRB) and official military personnel file (OMPF) all entries related to the non-judicial punishment (NJP) he received on 3 November 1998.

2. We recommend that Petitioner's request for relief be denied. Our analysis follows.

3. Background

a. On 3 November 1998, Petitioner, a staff sergeant, E-6, received NJP from the Commanding Officer (CO), Marine Corps Recruiting Station (MCRC), Montgomery, AL, for effecting the unlawful enlistment of two recruits, in violation of Article 84 of the Uniform Code of Military Justice (UCMJ). Petitioner was awarded forfeiture of \$970.00 pay per month for 2 months (forfeiture was suspended for 6 months).<sup>1</sup> Petitioner did not appeal the imposed punishment.

b. In September 1998, while Petitioner was the NCOIC of Recruiting Sub Station (RSS) Meridian, Mississippi, it was his duty to train and supervise three recruiters and, further, it was Petitioner's duty to ensure that recruiting operations were conducted legally and ethically. During September 1998, a recruit alleged that he never graduated from high school and that his recruiter had altered his transcripts to make it appear that he graduated. During the ensuing investigation, a second incident involving falsification of records was discovered. The recruiter for both individuals was a Marine sergeant, who at the time of the falsification, was a recruiter supervised by Petitioner.

<sup>1</sup> The amount awarded was not correct because Petitioner was 46 days shy of having over 12 years of active service. The correct amount should have been \$922.65.

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IN THE CASE OF STAFF SERGEANT [REDACTED]  
[REDACTED] USMC

c. The Commanding Officer, Recruiting Station Montgomery, Alabama, directed an inquiry into the allegations. [REDACTED], USMC conducted the inquiry. During his investigation, Captain [REDACTED] interviewed or otherwise obtained statements from all parties involved.

d. Statements were obtained from the two Marines whose transcripts were allegedly altered, Privates [REDACTED] and [REDACTED]. Private [REDACTED] states that he told his recruiter that he did not receive a high school diploma; that his recruiter, Sergeant [REDACTED] told him not to worry about it; and, that Sergeant [REDACTED] stated he would "take care" of his transcripts. Private [REDACTED] also states that he didn't receive a high school diploma; that he told Sergeant [REDACTED] that he didn't receive a diploma; and, that Sergeant [REDACTED] told him, on the day he left for Parris Island, that if asked, he should claim that he had a diploma.

e. Statements were also obtained from the recruiter assistants, Lance Corporals [REDACTED] and [REDACTED] who were asked to retrieve Private [REDACTED] and Private [REDACTED] school transcripts from school administrators. Lance Corporal [REDACTED] made a written statement. Lance Corporal [REDACTED] states he was asked to retrieve a transcript for [REDACTED]. Upon his return, he placed the transcript on Petitioner's desk at RSS Meridian. Lance Corporal [REDACTED] states that he was not asked to change any documents and that he was not aware that any documents had been changed. Lance Corporal [REDACTED] is characterized by the investigation officer as "evasive" and would only make an oral statement to the investigating officer. Lance Corporal [REDACTED] verbally stated that he was asked to retrieve Private [REDACTED] high school transcripts, that when he obtained the transcripts, he called Petitioner and informed Petitioner that Private [REDACTED] did not graduate. Lance Corporal [REDACTED] states that Petitioner "told him to bring back documents that showed Private [REDACTED] as a high school graduate."

f. Several statements were also obtained from Sergeant [REDACTED] who recruited Privates [REDACTED] and [REDACTED]. At first, Sergeant [REDACTED] denied any knowledge of falsified transcripts. As the investigation developed, Sergeant [REDACTED] eventually admitted falsifying [REDACTED] and [REDACTED] transcripts to reflect

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF STAFF SERGEANT [REDACTED]  
[REDACTED] SMC

that they had graduated from high school. Sergeant [REDACTED] claims to have made both changes in the presence of Petitioner and that Petitioner had full knowledge of the falsification.

g. Petitioner made a written statement in which he denies all knowledge of the falsifications. Petitioner states that on "the day in question" a recruiter assistant, Lance Corporal [REDACTED] brought the transcript to the office and gave it to Sergeant [REDACTED]. Petitioner further states that Sergeant [REDACTED] had the paperwork "for a few minutes" and then brought it to him who was then in the room. Petitioner denied that the applicant ever told him about not graduating from high school.

h. Petitioner was offered, and he accepted, NJP. Petitioner pleaded not guilty.

i. On 4 November 1998, as a result of the NJP, the CO, MCRS, Montgomery, AL, recommended that Petitioner be relieved for cause.

#### 4. Analysis

a. Petitioner claims that his NJP was unjust because he believes the preliminary inquiry into his misconduct contained "inconsistencies" and he believes the CO may have misinterpreted a statement Petitioner made at the NJP. Petitioner's claims are without merit.

b. As an initial observation, we note that no legal error occurred in the imposition of NJP.

c. Further, Petitioner has provided no credible evidence that his NJP was unjust. Rather, Petitioner presents a statement pointing out what Petitioner refers to as "inconsistencies in the investigation." We note that even if there were substantial inconsistencies in the investigation, the consistency of the investigation is not what is at issue. The issue is whether or not the NJP was just.

d. The record of the NJP reveals that the NJP was just. The record of the proceeding is meager, consisting of handwritten notes on a preprinted outline script of a generic NJP.

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[REDACTED] USMC

It is however, sufficient, to ascertain the procedural sufficiency of the proceeding. It is clear from the notes that the CO heard from all parties to the allegation. Sergeant [REDACTED] testified that he and Petitioner discussed changing transcripts and that Petitioner knew that both [REDACTED] and [REDACTED] did not graduate. The notes also reflect that the CO heard telephonic testimony from Lance Corporals [REDACTED] and [REDACTED]. While the NJP notes do not reflect the contents of the Lance Corporal's testimony, we can be sure it was testimony against Petitioner in that the notes on Petitioner's testimony reflect that he "disputes" the testimony of Sergeant [REDACTED], Lance Corporal [REDACTED], and Lance Corporal [REDACTED]. The notes also reflect that the CO heard from seven witnesses presented by Petitioner. It also appears that Petitioner made a statement on his own behalf. In summary, the notes of the NJP proceeding reveal that the CO conducted a full and fair proceeding which afforded Petitioner every opportunity to tell his side of the story.

e. As for Petitioner's specific allegation that the CO misinterpreted Petitioner's answer to one question at NJP, it is impossible to determine if this was the case. Even so, the CO's question, "So, effectively, what did you tell him to do" was only one question in what the Petitioner reports to have been 2 days of NJP proceedings.

f. Moreover, Petitioner, in his rebuttal to the fitness report for the period in question, dated 14 November 1998, admits his misconduct. In a writing directly referencing Article 84, UCMJ, Petitioner states, "I make no excuses and accept the responsibility for my actions that led to these proceedings . . . I realize my actions were not in keeping with these time honored traditions . . . I admit for the period covered in this report, that my actions were not of the Marine Corps standard."

g. In conclusion, Petitioner's claim that his NJP was unjust because he was not guilty is without merit. Petitioner accepted NJP, pleaded not guilty, and was found guilty by his CO. The investigation that was conducted supported the finding of guilt. Petitioner's rebuttal statement is a post NJP admission of guilt, one that specifically references his

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IN THE CASE OF STAFF SERGEANT [REDACTED]  
O [REDACTED] USMC

violation of Article 84, UCMJ, unlawful enlistment. Petitioner was afforded the opportunity to consult with counsel prior to accepting NJP. Similarly, Petitioner was informed of his right to demand trial by court-martial but accepted NJP on advise of counsel. Finally, Petitioner was informed of his right to appeal at the time of his NJP but elected not to appeal.

5. Conclusion. The requested relief should be denied.

[REDACTED]

Head, Military Law Branch  
Judge Advocate Division



8387-01

UNITED STATES MARINE CORPS  
MARINE CORPS RECRUITING COMMAND  
3280 RUSSELL ROAD  
QUANTICO, VA 22134-5103

IN REPLY REFER TO:  
1610  
G-1  
FEB 14 2002

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION IN THE CASE OF STAFF [REDACTED] USMC

Ref: (a) MCRC ltr 1500 RT of 1 Oct 97, Volume III, Guidebook for Recruiting Station (RS) Operations  
(b) MCO P1000.6G, Assignment, Classification and Travel Systems Manual  
(c) ALMAR 181/95, Establishment of the Marine Corps Recruiting Ribbon

1. We were asked to provide an advisory opinion on Staff Sergeant [REDACTED] request to have information concerning his relief for cause (RFC) removed from his Official Military Personnel File (OMPF), reinstatement of his 8411 additional MOS, and authorization to wear the Recruiting Ribbon. We recommend that Staff Sergeant [REDACTED] request be denied.

2. While serving as a Noncommissioned Officer in Charge of a recruiting substation in 1998, he was awarded NJP for three offenses in violation of Articles 84 and 107, Uniform Code of Military Justice (UCMJ). Specifically, he knowingly enlisted two applicants who were not qualified for enlistment and he made a false official statement to an investigating officer. Staff Sergeant [REDACTED] subsequently relieved for cause based on his misconduct.

3. The RFC package in Staff Sergeant [REDACTED] OMPF appears to have been prepared and submitted per reference (a); i.e., Staff Sergeant [REDACTED] properly relieved for cause based on misconduct. He submitted a rebuttal statement to the recommendation which is included in his OMPF. We recommend his petition to remove his RFC package be denied.

4. Additionally, we recommend denial of his requests to have his 8411 MOS reinstated and authority to wear the Recruiting Ribbon. Per reference (b), Staff Sergeant [REDACTED] additional MOS was properly revoked for disciplinary action. Per reference (c), authority to wear the Recruiting Ribbon is predicated on holding the 8411 additional MOS and on successfully completing a tour of recruiting duty. As Staff Sergeant [REDACTED] additional MOS has been revoked as a result of his relief for cause, he is not authorized to wear the Recruiting Ribbon.

[REDACTED]  
Chief of Staff